RECENT DECISIONS

CONSTITUTIONAL LAW—STATE LICENSING OF CHAUFFEUR IN FEDERAL EMPLOYMENT.—By the laws of Maryland, drivers of motor vehicles must submit to an examination and pay a fee of three dollars to obtain a license. The defendant, the driver of a United States mail truck, was arrested for driving without a license. *Held,* the state had no power to require the defendant to take out a license. *Johnson* v. *Maryland* (1920) 41 Sup. Ct. 16.

The states have no power to tax instrumentalities of the United States. *M'Culloch* v. *Maryland* (1819) U. S. 316; *Farmers, etc. Bank* v. *Minnesota* (1914) 232 U. S. 516, 34 Sup. Ct. 354. Nor can they burden the federal taxing power. *United States* v. *Snyder* (1839) 149 U. S. 210, 13 Sup. Ct. 846; *North Dakota, etc.* v. *Hanson* (1910) 215 U. S. 515, 30 Sup. Ct. 179. But a state franchise tax measured by capital stock which includes United States Government bonds is valid. *Home Ins. Co.* v. *New York* (1890) 134 U. S. 594, 10 Sup. Ct. 593. The governor of a soldiers' home who has authorized the use in the home of oleomargarine in violation of the terms of a state law is not punishable by the state *Ohio* v. *Thomas* (1899) 173 U. S. 276, 19 Sup. Ct. 453. An innkeeper's lien is not enforceable against horses while actually carrying the mail. *United States* v. *Barney* (D. C. 1810) 24 Fed. Cas. No. 14,525. A marshal acting under federal authority is immune from state prosecution for murder. *In re Neagle* (1890) 135 U. S. 1, 10 Sup. Ct. 658. But the driver of a mail truck may be arrested by a state for reckless driving; *United States* v. *Hart* (C. C. 1817) 1 Pet. 390; or for violating the rules of the road. *Commonwealth* v. *Closson* (1918) 229 Mass. 329, 118 N. E. 653. The principle seems to be that while direct interference with federal instrumentalities is prohibited, incidental regulation is permitted. The instant case seems well within the field of direct interference. If the license fee is for revenue, it is a direct tax on the postal service. At any rate, the examination requirement is a regulation by which the states might virtually control the selection of federal employees. Not even the courts have power to review the action of a ministerial officer in the employment of government agents. *Cf. Keim* v. *United States* (1900) 177 U. S. 290, 20 Sup. Ct. 574. No more should the states. Indeed, the courts have held that a state or city cannot require the employees of persons engaged in interstate commerce to be licensed. *Crutcher* v. *Kentucky* (1891) 141 U. S. 47, 11 Sup. Ct. 851; *Barrett, etc.* v. *City of New* York (1914) 232 U. S. 14, 34 Sup. Ct. 203. The instant case is sound by analogy as well as on policy.

CONTRACTS—AUCTION SALE—AGREEMENTS NOT TO BID.—An agreement was made by a number of intending purchasers at an auction sale not to bid against one another but that one should become the purchaser and share the profits with the others. *Held,* such an agreement is not enforceable at law. *Rawlins* v. *General Trading Co.* [1920] 3 K. B. 30, 40 Canadian L. T. 963.

At common law an agreement by brokers that only one of a group would bid at an auction and that the profits derived would be distributed equally was held an indictable offense. *Levi* v. *Levi* (1833) 6 C. & P. 413. But the courts of Chancery refused to set aside sales procured under such agreements although competition had been stifled thereby and the property secured at much less than the market price. *Heffer* v. *Martyn* (1867) 36 L. J. Ch. 372; *In re Carew's Estate* (1858) 26 Beav. 187. The early authorities in this country took a view directly opposed to

that of the English Chancery Courts, and regardless of the purpose or intent of any such combination an agreement to refrain from bidding at a sale was declared invalid and unenforceable as contrary to public policy. *Thompson* v. *Davies* (N. Y. 1816) 13 Johns *112. This extreme stand was soon modified and today the agreement and sale are both enforceable provided the purpose of the contracting parties is not to prevent fair competition. *Phippen* v. *Stickney* (1841) 44 Mass. 384; *Mallon* v. *Buster and Allin* (1905) 121 Ky. 379, 89 S. W. 257; *Hopkins* v. *Ensign* (1890) 122 N. Y. 144; 25 N. E. 306. That the auctioneer at a public or private sale has not fixed his reserve bidding sufficiently high should be immaterial if the conduct of the purchasers has been fraudulent; the agreement and the sale should be unenforceable as contrary to public policy.

CONTRACTS—PRINTED MATTER ON STATIONERY AS PART OF THE AGREEMENT.—A printed paragraph in clear type to the left of the signature, subjecting all transactions of the plaintiff to the rules of the Stock Exchange, was held by the lower court to be part of the contract as a matter of law. *Held,* on appeal, the judgment must be reversed on the ground that the question was one of fact and should have been submitted to the jury. *Goldsmith* v. *Italian Discount & Trust Co.* (Sup. Ct. App. Term, 1st Dept., 1920) 111 Misc. 613, 182 N. Y. Supp. 335.

Where a contract is partly written and partly printed the whole will be construed together and effect given to every term thereof unless the printed language is repugnant to the writing. *Harding* v. *Cargo of* 4,698 *Tons, etc. Coal* (D. C. 1906) 147 Fed. 971. Most courts hold, however, that printed bill heads, or matter in obscure type inconspicuously appearing at the top or bottom of the paper, to which reference is not made in the body of the contract, do not form a part thereof. *Sturtevant Co.* v. *Fireproof Film Co.* (1915) 216 N. Y. 199, 110 N. E. 440; *Sturm* v. *Boker* (1893) 150 U. S. 312, 14 Sup. Ct. 99; *cf. Hadaway* v. *Post* (1889) 35 Mo. App. 278. But where the printed clauses are in large type, prominently displayed, they must be deemed part of the contract. *Poel* v. *Brunswick Balke Collender Co.* (1915) 216 N. Y. 310, 110 N. E. 619. The problem is not to construe the terms of the contract but to establish what the terms are. This is for the jury to determine if doubt exists. *Ohio & Michigan Coal Co.* v. *Clarkson Coal & Dock Co.* (C. C. A. 1920) 266 Fed. 189; *contra, Menz Lumber Co.* v. *McNeeley Co.* (1910) 58 Wash. 223, 108 Pac. 621. Apparently acceptance of a document implies assent to its terms, wherever the offeree actually knows of them, or is reasonably put upon inquiry both by the nature of the instrument and by their display therein, or where reasonable means are taken to put him on inquiry although in fact he does not know of the stipulations. *Watkins* v. *Rymill* (1883) L. R. 10 Q. B. D. 178. By analogy printed matter on the offeror's stationery, when those requirements are met, should, if relating thereto and not repugnant thereto, be incorporated in the contract, unless evidence is adduced to prove a contrary intent of the parties. See Williston, *Contracts* (1920) §90.

DOWER—TENANCY IN COMMON—VOLUNTARY PARTITION.—One O'Steen having died intestate, his ten children, the only heirs at law, took his property as tenants in common. All the children joined in a conveyance to the complainant, O'Steen's widow, but the defendant, the wife of one of the children, did not join, and did not receive any of the proceeds. In an action to quiet title, the defendant set up her dower right. *Held,* for the defendant, since there was no judicial sale for division. *O'Steen* v. *O'Steen* (Ala. 1920) 85 So. 547.

Ordinarily, the inchoate right of dower cannot be defeated by the claim of a *bona fide* purchaser of land from the husband. *Cruize* v. *Billmire* (1886) 69 Iowa 397, 28 N. W. 657. But where there is a tenancy in common, the inchoate dower